

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Bryan Brown

v.

Civil No. 09-cv-139-SM

State of New Hampshire¹

O R D E R

Before the Court is Bryan Brown's petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. Brown initiated this matter on April 22, 2009, with "Defendant's Motion for Stay of Proceedings or Extension of Time" (document no. 1), which was docketed as the initial petition in this matter, although it is more accurately described as a motion seeking more time to file a habeas petition. On May 28, 2009, I extended the time for Brown to file his petition for sixty days (document no. 4), and ordered him to file an appeal of his federal claims in the New Hampshire Supreme Court. I further ordered that this action be stayed until such time as the New Hampshire Supreme

¹Brown has named the State of New Hampshire as the respondent to this action. The proper respondent, however, is Richard Gerry, Warden of the New Hampshire State Prison for Men. See 28 U.S.C. § 2243. I therefore construe the petition as naming Gerry as the respondent to this action for all purposes.

Court rendered a decision and petitioner accordingly seeks to amend his petition here. Petitioner has now filed an amended habeas petition (document no. 5), setting forth the claims he intends to pursue in his federal habeas action.


As indicated in my May 28 Order, this matter is stayed while Brown completes exhaustion of his claims in the state courts. Brown's petition indicates that his state appeal is pending in the New Hampshire Supreme Court. If he has not already done so, Brown is reminded that he must raise the federal nature of each of his claims in his state court action, or face dismissal of this matter. See Picard v. Connor, 404 U.S. 270, 275 (1971) (requiring petitioner to have fairly presented the federal nature of his claims to the state courts to give them the first opportunity to remedy the claimed constitutional error); Lanigan v. Maloney, 853 F.2d 40, 42 (1st Cir. 1988) ("habeas corpus petitioner must have presented the substance of his federal constitutional claim to the state appellate courts so that the state had the first chance to correct the claimed constitutional error").

Conclusion

The Court orders as follows:

1. This matter is to remain stayed.
2. At least every ninety days, petitioner is ordered to advise this Court of the status of his New Hampshire Supreme Court case.
3. Once the New Hampshire Supreme Court has rendered a final decision in this matter, petition is directed to notify this Court within thirty days of the date of that Order, and to forward to this Court a copy of the New Hampshire Supreme Court's decision. Petitioner must then move to reopen the case.
4. Once the case is reopened, it will be forwarded to me for preliminary review.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: September 15, 2009

cc: Bryan Brown, pro se

JM:jba